

Office-Supreme Court, U.S.
FILED

APR 13 1983

ALEXANDER L. STEVAS,
CLERK

NO. 82-1398

IN THE
Supreme Court of the United States
OCTOBER TERM 1982

M/V POLLUX, Her Engines, Tackle, Apparel,
Etc., *In Rem* and
NEGOCIOS DEL MAR, S.A.,
Petitioner

v.

GOODPASTURE, INC.,
Respondent

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

E. D. VICKERY
KENNETH D. KUYKENDALL
Attorneys for Petitioner

Of Counsel:

ROYSTON, RAYZOR, VICKERY & WILLIAMS
2200 Texas Commerce Tower
Houston, Texas 77002
(713) 224-8380

SUBJECT INDEX

	Page
ARGUMENT	1
GOODPASTURE'S BRIEF DEMONSTRATES PETITIONER NOT ACCORDED DUE PROCESS	1
GOODPASTURE'S REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI ARE LEGALLY UNSUPPORTABLE	3
1. The Petition for Writ of Certiorari was timely filed, and the decision of the Court of Appeals does not bind this Court under the law of the case doctrine.	3
2. Petitioner was denied due process in the June 18, 1979 hearing.	7
CONCLUSION	10
CERTIFICATE OF SERVICE	
APPENDIX "A"—Pertinent Portions of Briefs in Fifth Circuit Showing June 18, 1979 Hearing Was Not a Trial On Merits	1a
APPENDIX "B"—Fifth Circuit Letter Establishing A Briefing Schedule Dated July 3, 1979	3a

LIST OF AUTHORITIES

CASES	Page
Armstrong v. Manzo, 380 U.S. 545, 14 L.Ed.2d 62, 85 S.Ct. 1187 (1965)	3
Cardelis v. Refineria Panama, S.A., 384 F.2d 589 (5th Cir. 1967)	5
Catlin v. United States, 324 U.S. 229, 233, 65 S.Ct. 631, 633, 89 S.Ct. 911 (1945)	5
Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970)	3
Mahon v. Stowers, 416 U.S. 100, 40 L.Ed.2d 79, 94 S.Ct. 1626 (1974), <i>on remand</i> , In the Matter of Samuels & Co., Inc., 510 F.2d 139 (5th Cir. 1975), <i>reh. en banc</i> , 526 F.2d 1238 (5th Cir. 1976)	7
Messinger v. Anderson, 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152 (1912)	5
Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 437, 76 S.Ct. 895, 100 L.Ed. 1297 (1965)	5

II

CASES

	Page
T. J. Stevenson & Co., Inc. v. 81,193 Bags of Flour, 629 F.2d 338 (5th Cir. 1980)	7
United States of America v. United States Smelting, Refining & Mining Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 (1950)	5, 6

UNITED STATES STATUTES

28 U.S.C. § 1291	5
28 U.S.C. § 1292(a)(3)	5

FEDERAL RULES OF CIVIL PROCEDURE

Rule 54(b)	5
------------------	---

TEXTS

Restatement of Judgment, Second (1980) § 13 comment b, p. 133	4
---	---

NO. 82-1398

IN THE
Supreme Court of the United States

OCTOBER TERM 1982

M/V POLLUX, Her Engines, Tackle, Apparel,
Etc., *In Rem* and
NEGOCIOS DEL MAR, S.A.,
Petitioner

v.

GOODPASTURE, INC.,
Respondent

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

Now comes Petitioner and files this Reply to the Brief in Opposition to Petition for Writ of Certiorari filed by Respondent Goodpasture, Inc., and Petitioner would respectfully show that the Petition for Writ of Certiorari should be granted.

ARGUMENT

Numerous statements in Goodpasture's Brief in Opposition to the Petition for Writ of Certiorari are legally and factually inaccurate, and Petitioner will point out these inaccuracies in detail hereinafter. However, *if* the assertions made by Goodpasture in the Statement of the Case are accepted and read in light of the decision of the Court of Appeals for the Fifth Circuit dated September 10, 1979, Goodpasture's Brief itself establishes that Petitioner was denied constitutional process.

**GOODPASTURE'S BRIEF DEMONSTRATES
PETITIONER NOT ACCORDED DUE PROCESS**

Petitioner refers to Goodpasture's version of the facts on page 2 of its Brief, as follows:

"Petition also moved to dismiss Goodpasture's suit and to lift the arrest of the POLLUX alleging that Goodpasture was not the owner of the grain. Petitioner requested and was granted a hearing on its motion to dismiss. The hearing was held on May 30, 1979. *At that hearing, both Petitioner and Respondent agreed that Petitioner's claims against the wheat were not in issue, but only Goodpasture's ownership of the cargo.* The Court then, at Petitioner's urging, set the case for trial to determine the ownership of the grain and Respondent's right to maintain the arrest of the POLLUX." (Emphasis supplied)

Petitioner strongly denies it made a request for a trial on the merits, and the transcript of the proceedings on May 30 and June 18, 1979, clearly demonstrate that the Judge granted Petitioner a post-seizure hearing to satisfy constitutional due process. Nevertheless, the statement that "Petitioner and Respondent agree that Petitioner's claims against the wheat were not in issue" at the time of the hearings on May 30 and June 18, 1979 is obviously correct; and this was the reason the District Court refused to allow Petitioner to introduce any evidence to support its *in rem* claim against the wheat cargo. However, the basis of the decision of the Court of Appeals dated September 10, 1979, was that the M/V POLLUX had converted such wheat cargo by asserting a maritime lien against the cargo, as follows:

It remains to consider whether the seizure of Goodpasture's wheat by Negocios as security for its claims against Empac was a maritime tort giving rise to an *in rem* claim in Goodpasture against the POLLUX. . . . Our situation here is less aggravated, for POLLUX did not sail but merely asserted a claim in the nature of a maritime lien against the wheat. . . . We think these actions by Negocios were sufficiently at variance with the right to possession of the wheat by its owner, Goodpasture, to constitute conversion. . . ." (Opinion of Fifth Circuit dated September 10, 1979, Appendix H, pp. 30a and 31a).

The decisions of this Court clearly hold that the Fifth Circuit could not constitutionally determine Petitioner converted the cargo by asserting a maritime lien on such cargo when that issue had been removed from consideration of the District Court by agreement of the parties. *Armstrong v. Manzo*, 380 U.S. 545, 14 L.Ed.2d 62, 85 S.Ct. 1187 (1965); *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970). Furthermore, even if the lack of due process were not in issue, the Court of Appeals could still not reverse the decision of the District Court on a basis not presented to the District Court.

**GOODPASTURE'S REASONS FOR DENYING
PETITION FOR WRIT OF CERTIORARI
ARE LEGALLY UNSUPPORTABLE**

Respondent Goodpasture, Inc. urges that the Supreme Court deny the Petition for Writ of Certiorari because (1) the Petition for Writ of Certiorari was not timely filed; (2) Petitioner was not denied due process in the June 18, 1979, proceeding; and (3) the District Court and the Court of Appeals properly applied the law of the case doctrine to all proceedings after the Court of Appeals' September, 1979 decision. Petitioner will discuss contentions (1) and (3) together and contention (2) separately to reveal the lack of any basis in the evidence or legal authorities to support such positions.

- 1. The Petition for Writ of Certiorari was timely filed, and the decision of the Court of Appeals does not bind this Court under the law of the case doctrine.**

Respondent takes the position that since the Petition for Writ of Certiorari was not filed within ninety days of the decision of the Court of Appeals denying the Motion for Rehearing on October 26, 1979, then the decision of the Court of Appeals dated September 10, 1979, is binding on the Court as the law of the case. Obviously, since

the hearing of June 18, 1979, was a post-seizure hearing in accordance with constitutional due process, the reversal and remand of the case to the District Court should have been for a trial on the merits; and this appeal seeks to correct the error of the District Court and Court of Appeals in refusing Petitioner a trial on the merits. In fact, the District Court initially ruled on September 17, 1979, after remand from the Fifth Circuit, that the case would proceed to trial on the merits. Subsequently, the District Court changed its ruling on December 6, 1979, and ordered the case be set for a hearing on Show Cause Why Judgment Should Not Be Entered in Favor of Goodpasture on the basis of the Fifth Circuit's decision. On February 27, 1980, the District Court refused to set the case for a trial on the merits and heard evidence on the Show Cause hearing. Finally, the District Court's Memorandum and Order dated June 11, 1980, determined that it was bound by the previous decision of the Fifth Circuit concerning liability. Hence, this appeal from the decision of the District Court dated June 11, 1980, which was affirmed by the Court of Appeals on October 12, 1982, is obviously timely.

In addition, *if* the Court assumes that Respondent's position is correct in labeling the hearing on June 18, 1979, a trial on liability, this appeal is still timely because (1) the Fifth Circuit decision was remanded for "further proceedings",¹ and (2) the decision did not resolve the damage issues.² Although the decision of the District

1. "For the reasons to be stated in an opinion which we shall shortly hand down, the order of the District Court dismissing the second amended complaint of Goodpasture, Inc. as to the M/V POL-LUX, lifting the seizure of it, and releasing it from arrest is reversed and the cause is remanded for further proceedings." (Order of the Fifth Circuit dated August 13, 1979, Appendix G, p. 22a)

2. See, Restatement of Judgment, Second (1980) § 13 comment b, p. 133, as follows:

"Finality will be lacking . . . if the amount of damages . . . remains to be determined."

Court did not meet the finality requirement under 28 U.S.C. § 1291,³ Goodpasture's appeal was proper under 28 U.S.C. § 1292(a)(3).⁴ In fact, Respondent's attorney adopted this position on September 17, 1979, after remand from the Fifth Circuit, to support Goodpasture's argument of a trial on the merits, as follows:

MR. SYDOW (Goodpasture's attorney): There is such things as bifurcated trials on liability and damages which is what, in effect, we have had here." (Petition for Writ of Certiorari, Appendix I, p. 32a.)

Therefore, even though 28 U.S.C. § 1292(a)(3) would have allowed Petitioner to file a Petition for Writ of Certiorari, such right was permissive and not mandatory; and Petitioner could await the determination of the additional liability and damage issues. *United States of America v. United States Smelting, Refining & Mining Co.*, 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 (1950); *Cardelis v. Refineria Panama, S.A.*, 384 F.2d 589 (5th Cir. 1967).

Respondent's Brief refuses to acknowledge the clear ruling of this Court that the decision of the Court of Appeals does not bind this Court under the law of the case doctrine. *Messinger v. Anderson*, 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152 (1912). *United States of America v. United States Smelting, Refining & Mining Co.*, 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 (1950) demonstrates the non-binding effect of the law of the case doctrine is an analogous situation, as follows:

3. "Finality" under Rule 54(b) is generally understood as that degree of finality required to meet the appealability requirement of 28 U.S.C. § 1291. *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437, 76 S.Ct. 895, 100 L.Ed. 1297 (1965). This, in turn, is defined as a judgment "which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct. 631, 633, 89 S.Ct. 911 (1945).

4. "The courts of appeal shall have jurisdiction of appeals from: . . . (3) interlocutory decrees of such district courts or the judges thereof determining the rights and liability of the parties to admiralty cases in which appeals from final decrees are allowed; . . ."

"The rule of law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, it should be the end of the matter. . . . It is not applicable here because when the case was first remanded, nothing was finally decided. The whole proceeding thereafter was in fieri. The Commission had a right on reconsideration to make a new record. . . . When finally decided, all questions were still open and could be presented. The fact that an appeal could have been taken from the first order of the District Court was not because it was a final adjudication but because temporary injunction had been granted in order to maintain the status quo. This was an interlocutory order that was appealable because Congress, notwithstanding its interlocutory character, had made it appealable. 28 USCA § 1253, FCA title 28, § 1253. The appellants might have appealed, but they were not bound to. We think that it requires a final judgment to sustain the application of the rule of the law of the case just as it does for the kindred rule of *res judicata*. . . . And although the latter is a uniform rule, the 'law of the case' is only a discretionary rule of practice. It is not controlling here. . . ." 94 L.Ed. at 760, 761.

In *United States v. United States Smelting R. & M. Co.*, *supra*, the Interstate Commerce Commission enjoined carriers from performing switching and spotting services in certain industrial plants, but a three judge District Court held the order unlawful and remanded the case to the Interstate Commerce Commission; and an appeal to the Supreme Court was not taken from the decision of the three judge court. On remand, the Commission did not take any further evidence, but it again entered a cease and desist order against the carrier; and the District Court again held the order unlawful. On appeal to this Court, Respondent argued that the law of the case had been established by the previous decision of the three judge Court, but this Court held that the law of the case was not applicable to the order of the three judge District Court.

2. Petitioner was denied due process in the June 18, 1979 hearing.

Respondent's Brief alleges that Petitioner was not denied due process because (1) the District Court intended the hearing on June 18, 1979, to be a trial on the merits; (2) Petitioner judicially admitted that it knew the hearing on June 18, 1979 was a trial on the merits; and (3) it put ownership of the cargo in issue at the time of the hearing on June 18, 1979.⁵ First, *Petitioner categorically denies the allegation that the District Court intended the June 18, 1979, hearing to be a trial on the merits; and Petitioner calls this Court's attention to the fact that Respondent has conscientiously avoided reference to the numerous rulings of the District Court regarding the hearing on June 18, 1979.* Reference to only a few such comments in the Appendixes to the Petition for Writ of Certiorari will clearly demonstrate the District Court's views as follows:

1. **THE COURT:** What I'm doing, I imagine, is giving him his due process claims as to whether or not this arrest of the vessel is done without due process of law, as a deprivation of property without due proc-

5. The hearing of June 18, 1979, was concerned only with the legal issue of whether Petitioner had converted the cargo by refusing to issue a freight prepaid bill of lading without receiving payment of the charter hire. The issue of ownership of the wheat was important because the owner of the wheat would be entitled to the bill of lading. The bill of lading showed Empac was the shipper, i.e., owner of the cargo. Goodpasture produced the Confirmation of Sale contract regarding the sale of the grain to Empac. This contract passed title to the grain cargo to Empac by operation of law under the Texas Uniform Commercial Code. *Mahon v. Stowers*, 416 U.S. 100, 40 L.Ed.2d 79, 94 S.Ct. 1626 (1974), *on remand*, *In the Matter of Samuels & Co., Inc.*, 510 F.2d 139 (5th Cir. 1975), *reh. en banc*, 526 F.2d 1238 (5th Cir. 1976); *T. J. Stevenson & Co., Inc. v. 81,193 Bags of Flour*, 629 F.2d 338 (5th Cir. 1980). Nevertheless, at the time of the hearing on June 18, 1979, Goodpasture repudiated the contract, and its witnesses testified that the contract had been voided and replaced by an oral agreement between Empac and Goodpasture whereby title to the grain cargo did not pass until Goodpasture had been paid under the letter of credit.

ess of law. In trying to satisfy the due process requirements by having this hearing at this time." (Hearing, May 30, 1979, Appendix B, p. 3a).

2. "THE COURT: Goodpasture, Inc. versus the M/V POLLUX, her engines, tackle, apparel, et cetera, Empac Grain Company and Negocios Del Mar, S.A., her owners and/or operators, civil action number H-79-770. This is a motion to have a hearing as to the matter of the arrest of the ship and the question as to whether or not the ship should be released from arrest or sold pursuant to the arrest. Are you ready to go forward?

MR. SYDOW (Goodpasture's attorney): Ready, Your Honor.

MR. KUYKENDALL (Negocios' attorney): Defendant is ready, Your Honor.

MR. PEARSON (Empac's attorney): Empac is ready, Your Honor.

THE COURT: All right, you may proceed." (Hearing June 18, 1979, Appendix C, p. 8a)

3. "Briefs were filed by the parties and a hearing was conducted on June 1, 1979 (May 30, 1979). After reviewing the issue and being of the opinion that a further evidentiary hearing concerning Plaintiff's *in rem* against the vessel was necessary in order for the Court to rule upon Negocios' Motion to Lift the Arrest of the vessel a hearing was set for June 18, 1979, for the purpose of taking evidence and hearing arguments concerning Plaintiff's *in rem* claim against the vessel." (District Court's Memorandum and Order dated June 11, 1980, Appendix K, p. 45a)

Second, *Petitioner did not judicially admit it knew the trial of June 18, 1979, was a trial on the merits*. Respondent cites from a Brief filed by Petitioner on June 30, 1979, in which Petitioner referred to the hearing as a "trial on the merits of Goodpasture's *in rem* cause of action against the vessel." Petitioner has previously admitted that this was merely a mistake in terminology, and it was caused by the absence of the attorney in charge of the case dur-

ing the week of June 26, 1979; and this required another attorney to prepare this brief in support of an expedited appeal.

Petitioner filed an Emergency Motion to Lift District Court's Order Staying Release of the M/V POLLUX from Seizure and Motion for Expedited Appeal from that Order, and this Motion was reviewed by the attorney in charge on Saturday, June 23, 1979, prior to departing the United States for depositions; and this Motion was filed in the Court of Appeals on June 26, 1979. This Emergency Motion clearly represents the fact that the hearing of June 18, 1979, was an "evidentiary hearing."⁶

The matter of the emergency appeal was discussed with the Court of Appeals (Judge Gee) by telephone on June 29, 1979, and a letter dated June 30, 1979, forwarded all pleadings, briefs, depositions, exhibits, and transcript of the evidence to the emergency panel composed of Honorable Judges Gee, Hill, and Clark at their respective "home bases." An oral hearing was held in the chambers of Honorable Judge Thomas Gibbs Gee in Austin, Texas, on July 3, 1979. Judge Gee set the expedited appeal for argument on July 17, 1979, and the Fifth Circuit established a briefing schedule in its letter dated July 3, 1979.⁷ At the time of the oral argument on July 17, 1979, the Fifth Circuit considered the briefs filed by Goodpasture, Empac and Negocios; and the briefs of the parties accurately characterized the proceeding on June 18, 1979, as an evidentiary hearing and not a trial on the merits, as follows:⁸

Brief of Appellant/Cross Appellee Goodpasture, Inc. filed July 10, 1979.

6. The pertinent portion of the Emergency Motion is reproduced in Appendix "A".

7. A copy of the letter is attached as Appendix "B".

8. The pertinent portions of the briefs filed by Petitioner and Empac Grain Co., Inc., on July 16, 1979, are reproduced in Appendix "A".

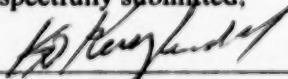
"On May 29, 1979, Negocios Del Mar filed a Motion to Lift Arrest of the POLLUX and requested an immediate post-seizure hearing. On May 30, 1979, the District Court heard arguments on Negocios Del Mar's Motion. At that time, the Court continued the arrest of the POLLUX and set Negocios Del Mar's Motion to Lift Arrest for an evidentiary hearing on June 18, 1979." (p. 3) (Emphasis supplied)

In conclusion, Goodpasture's contention that Petitioner knew that the hearing of June 18, 1979, was a trial on the merits is a gross misrepresentation and clearly contradicted by Goodpasture's own representations to the United States Court of Appeals for the Fifth Circuit on July 16, 1979, the day prior to oral argument of this case in the initial appeal. Also, Goodpasture's contention that the District Court intended the hearing of June 18, 1979, to be a trial on the merits because of the entries on the Docket Sheet is likewise unsupportable; and this can be easily demonstrated by the rulings of the District Court, which are cited verbatim on pages 7 and 8 of this brief.

CONCLUSION

The Petition for Writ of Certiorari should be granted to require the revision of Rule C to provide a prompt post-seizure evidentiary hearing in accordance with constitutional due process which cannot be changed into a trial on the merits.

Respectfully submitted,



KENNETH D. KUYKENDALL
Attorney for Petitioner

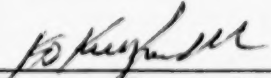
Of Counsel:

ROYSTON, RAYZOR, VICKERY & WILLIAMS
2200 Texas Commerce Tower
Houston, Texas 77002
(713) 224-8380

CERTIFICATE OF SERVICE

This is to certify that three copies of this Reply Brief have been served on all parties required to be served, i.e., on Respondent by placing the same in an envelope and depositing it in the United States mail, with first class postage prepaid, addressed to counsel of record in accordance with Rule 28.3 as follows: Michael Sydow, Esq., Eastham, Watson, Dale & Forney, Mellie Esperson Building, Houston, Texas 77002, on this FOURTH day of ~~March~~, 1983.

April



OF ROYSTON, RAYZOR, VICKERY
& WILLIAM:

APPENDIX "A"

PERTINENT PORTIONS OF BRIEFS IN FIFTH
CIRCUIT SHOWING JUNE 18, 1979 HEARING
WAS NOT A TRIAL ON MERITS

1. Emergency Motion to Lift District Court's Order Staying Release of the M/V POLLUX from Seizure and Motion for Expedited Appeal from that Order filed June 26, 1979.

"Finally, *after an evidentiary hearing on June 18 and 19, 1979*, the District Court held that Goodpasture had no *in rem* right against the vessel and instructed the United States Marshal to release the vessel. Nevertheless, Goodpasture immediately sought and obtained from the Court an indefinite stay of the order releasing the vessel pending action to be taken by Goodpasture to prosecute an expedited appeal. Hence, the purpose of this Motion is to obtain an expedited appeal of this case as soon as possible in order to lift the Stay Order entered by the District Court on June 22, 1979, and to allow the release of the M/V POLLUX from seizure." (Emphasis supplied)

2. Brief of Appellee Empac Grain Corporation, dated July 16, 1979.

"On May 29, 1979, Shipowner filed a Motion to Lift Arrest of the Vessel and requested an immediate hearing. *The Shipowner's Motion came on for hearing before the District Court on May 30, 1979, and at that time an evidentiary hearing was scheduled for June 18, 1979, to ascertain whether Goodpasture had stated a cause of action in rem against the vessel. The evidentiary hearing was held as scheduled on June 18 and 19, 1979.* On June 20, 1979, the District Court entered its Findings of Fact and Conclusions of Law relative to Goodpasture's *in rem* cause of action only and concluded that the Shipowner's refusal to sign the freight prepaid bills of lading did not constitute a conversion of Goodpasture's wheat, and that Shipowner was

under no statutory or contractual obligation to issue bills of lading in any form to Goodpasture; and that Goodpasture had no *in rem* right against the vessel. The District Court ordered Goodpasture's Complaint dismissed on the Vessel and ordered the seizure lifted on June 20, 1979." (p. 2) (Emphasis supplied)

3. Reply Brief of Appellee/Cross Appellant Negocios Del Mar, S.A. filed July 16, 1979.

"A hearing was held before the Court on June 18, 1979, and the District Court held that Goodpasture, Inc. did not have a maritime lien against the M/V POLLUX. The issue of whether or not Negocios Del Mar, S.A. had a maritime lien against the cargo was not litigated because Goodpasture, Inc. posted the required bond to provide security for the claim of Negocios Del Mar, S.A. in accordance with the Admiralty Supplemental Rules." (p. 4) (Emphasis supplied)

APPENDIX "B"

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

Office of the Clerk

July 3, 1979

Mr. Michael D. Sydow
Attorney at Law
947 Mellie Esperson Bldg.
Houston, Texas 77002

Mr. E. D. Vickery
Attorney at Law
3710 One Shell Plaza
Houston, Texas 77002

No. 79-2507 — Goodpasture, Inc. vs. M/V Pollux,
Etc., Et Al; Negocios Del Mar,
S.A., Etc.

Gentlemen:

This will confirm that the Court has ordered the appeal on its merits expedited for hearing at Houston, Texas on Tuesday, July 17, 1979.

This will also confirm that Mr. Sydow will deliver to Mr. Vickery his brief on the merits by the close of business on Tuesday, July 10, 1979 in order to permit a response by appellees as promptly as possible thereafter, and by not later than Monday, July 16, 1979.

Counsel should contact our Clerk's Office in Room 11621 11th Floor, U.S. Courthouse, 515 Rusk Avenue by the date of hearing to advise the names of counsel to present argument. The Clerk's Office telephone No. is 226-4753.

Very truly yours,

**EDWARD W. WADSWORTH
CLERK**

By: **GILBERT F. GANUCHEAU**
Gilbert F. Ganucheau
Chief Deputy Clerk

GFG:gc

cc: Mr. John R. Pearson